

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

DIET COFFEE, INC.,

Plaintiff,

v.

VIATEK CONSUMER PRODUCTS GROUP
INC., LOU LENTINE and ANGELO RAMS-
BOTT,

Defendants.

Civil Action No. 08-cv-04686-PKC

**DEFENDANTS' NOTICE OF MOTION AND
MOTION TO DISMISS UNDER RULE 12(b)**

PLEASE TAKE NOTICE that Viatek Consumer Products Group, Inc. ("Viatek"), Lou Lentine and Angelo Ramsbott move to dismiss this lawsuit under Federal Rule of Civil Procedure 12(b)(2) for lack of personal jurisdiction and under Rule 12(b)(3) for improper venue. Defendants request that the Court dismiss the Complaint with prejudice and enter judgment in Defendant's favor. In the alternative, Defendants request that the Court transfer the Complaint to a proper venue.

In support of their Motion, Defendants rely on this Notice of Motion and Motion to Dismiss under Rule 12(b), the Declaration of Lou Lentine and the exhibits attached thereto, and on Defendants' Memorandum of Law in Support of Their Motion to Dismiss Under Rule 12(b).

WHEREFORE, Viatek Consumer Products Group, Inc., Lou Lentine and Angelo Ramsbott respectfully request that this Honorable Court grant this Motion to Dismiss Under Rule 12(b), and enter an order dismissing the complaint against all Defendants. In the alternative, Defendants Viatek Consumer Products Group, Inc., Lou Lentine and Angelo Ramsbott respectfully

request that this Honorable Court conduct an evidentiary hearing to resolve contested questions of fact relevant to the jurisdictional question in this case. Alternatively, Defendants respectfully request that this Honorable Court transfer the complaint to a proper venue, that venue being the Middle District of Florida.

Respectfully submitted,

Dated: July 28, 2008

By:



Matthew L. Levine (ML-6247)
FISH & RICHARDSON P.C.
153 E. 53rd Street, 52nd Floor
New York, New York 10022
Telephone: (212) 765-5070 (ofc)
Facsimile: (212) 258-2291 (fax)

Craig R. Smith (BBO 636723)
FISH & RICHARDSON P.C.
225 Franklin St.
Boston, MA 02110
Telephone: (617) 542-5070
Facsimile: (617) 542-8906
(application for pro hac vice admission forthcoming)

*Attorneys for Viatek Consumer Products Group,
Inc., Lou Lentine and Angelo Ramsbott*

CERTIFICATE OF SERVICE

The undersigned hereby certifies that the DEFENDANTS' NOTICE OF MOTION AND MOTION TO DISMISS UNDER RULE 12(b), MEMORANDUM IN SUPPORT OF MOTION TO DISMISS FOR LACK OF PERSONAL JURISDICTION OVER DEFENDANTS and DECLARATION OF LUIS F. LENTINE were served on the defendant by sending copies via first class mail and e-mail to:

Moshe (Richard) Mortner
The Mortner Law Office, P.C.
40 Broad Street
Suite 500
New York, NY 10004
(212) 480-2181
Fax: (646) 304-3169
Email: rmm@mortnerlaw.com

on July 28, 2008.

A handwritten signature in black ink, appearing to read "Luke Sheldon", is written over a horizontal line.

Luke Sheldon

FISH & RICHARDSON P.C.